

Judgment / sentence date

Motion for new trial filed

No

☐

Yes

☒

Date

2/28/19
3/27/19

Deputy District Clerk

THE STATE OF TEXAS

2019 MAR 27 / PM 3:57

FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXASFILED IN
5th COURT OF APPEALS
DALLAS, TEXAS4/5/2019 12:02:04 PM
CAUSE NO. F 15-50350 -VLISA MATZ
Clerk

DEPUTY JUDICIAL 292nd DISTRICT COURT

VS.

STOYAN ALASTASSOV

DALLAS COUNTY, TEXAS

DEFENDANT'S NOTICE OF APPEAL AND PAUPER OATH APPOINTMENT OF ATTORNEY ON APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Defendant in the above cause and states: I am the defendant in the above cause; I was convicted in this cause and now give Notice of Appeal to the Texas Court of Appeals for the Fifth Supreme Judicial District of Texas of Dallas, Texas, and that I am penniless, destitute and indigent person, too poor to employ counsel to represent me on the appeal, and too poor to pay for or give security for the Statement of Facts and a true copy thereof herein. WHEREFORE, I pray that the Court will appoint an attorney to represent me in this appeal and that the Court will order the Court Reporter of this Court to prepare and deliver me or my appointed Counsel the original and a true copy of the Statement of Facts in this case, together with all exhibits attached thereto if practical.


 Defendant

BEFORE ME, the undersigned authority, personally appeared the above Defendant, known to me to be the person whose signature appears above, and after being duly sworn on oath states that he is the defendant in the above cause, and that the matters and things set forth in the foregoing are true and correct in all things.

Felicia Pitre
District Clerk
Dallas County, Texas

By

Deputy District Clerk

ORDER

The Defendant having requested the Court to appoint Counsel, it is Ordered the Honorable

Michael Mowla

Address:

PO Box Bob Cedar Hill TX. 75106
972 795 2401

a regular licensed and practicing attorney of Texas, be, and he/she is hereby appointed to represent Defendant in prosecuting his/her appeal herein, and it is further Ordered that the Court Reporter is hereby directed to transcribe all of the notes as same may appertain to his cause and as taken during the trial of this cause which began on _____, and make Statement of Facts in duplicate and furnish same to defendant or his appointed Counsel.


 Judge

Certification of Defendant's Right of Appeal

No. F15-50350

The State of Texas

In the 292 Court

v. S. Anastassov

of

Dallas County, Texas

Defendant

TRIAL COURT'S CERTIFICATION OF DEFENDANT'S RIGHT OF APPEAL

I certify that this criminal case:

☒ is not a plea-bargain case, and the defendant has the right of appeal;

☐ is a plea-bargain case, but matters were raised by written motion filed and ruled on before trial and not withdrawn or waived, and the defendant has the right of appeal;

☐ is a plea-bargain case, but the trial court has given permission to appeal, and the defendant has the right of appeal;

☐ is a plea-bargain case, and the defendant has NO right of appeal;

☐ the defendant has waived the right of appeal.

Judge

Date Signed 2/28/19

I have received a copy of this certification. I have also been informed of my rights concerning any appeal of this criminal case, including any right to file a *pro se* petition for discretionary review pursuant to Rule 68 of the Texas Rules of Appellate Procedure. I have been admonished that my attorney must mail a copy of the court of appeals' judgment and opinion to my last known address and that I have only 30 days in which to file a *pro se* petition for discretionary review in the Court of Criminal Appeals. TEX. R. APP. P. 68.2, 68.3. I acknowledge that, if I wish to appeal this case and if I am entitled to do so, it is my duty to inform my appellate attorney, by written communication, of any change in the address at which I am currently living or any change in my current prison unit. I understand that, because of appellate deadlines, if I fail to timely inform my appellate attorney of any change in my address, I may lose the opportunity to file a *pro se* petition for discretionary review.

Defendant

Mailing address:

Telephone number:

Email Address (if any):

Defendant's Counsel

State Bar of Texas ID number:

Mailing address:

Telephone number:

Email Address:

* See TEX. R. APP. P. 25.2(a)(2).



CASE NO. F-1550350-V Count No.

INCIDENT NO./TRN: 9191438284

THE STATE OF TEXAS

V.

STOYAN KALINOV ANASTASSOV

STATE ID NO. TX06756883

§
§
§
§
§
§
§

IN THE 292nd JUDICIAL DISTRICT

COURT

DALLAS COUNTY, TEXAS

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	Brandon Birmingham	Date Sentence Imposed:	2/28/2019
Attorney for State:	BRANDIE WADE	Attorney for Defendant:	TOM PAPPAS
<u>Offense for which Defendant Convicted:</u> INDECENCY WITH CHILD SEXUAL CONTACT			
<u>Charging Instrument:</u> INDICTMENT		<u>Statute for Offense:</u> 21.11(a)(1) Penal Code	
<u>Date of Offense:</u> 12/15/2011		<u>Plea to Offense:</u> NOT GUILTY	
<u>Degree of Offense:</u> 2ND DEGREE FELONY			
<u>Verdict of Jury:</u> GUILTY		<u>Findings on Deadly Weapon:</u> N/A	
1 st Enhancement Paragraph:	N/A	Finding on 1 st Enhancement Paragraph:	N/A
2 nd Enhancement Paragraph:	N/A	Finding on 2 nd Enhancement Paragraph:	N/A
<u>Punishment Assessed by:</u> JURY		<u>Date Sentence Commences:</u> (Date does not apply to confinement served as a condition of community supervision.) 2/28/2019	
<u>Punishment and Place of Confinement:</u> 3 YEARS INSTITUTIONAL DIVISION, TDCJ			
THIS SENTENCE SHALL RUN: CONCURRENT.			
<input type="checkbox"/> SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR (The document setting forth the conditions of community supervision is incorporated herein by this reference.)			
<input type="checkbox"/> Defendant is required to register as sex offender in accordance with Chapter 62, CCP. (For sex offender registration purposes only) The age of the victim at the time of the offense was N/A			
<u>Fine:</u> \$ 10,000.00	<u>Court Costs:</u> \$ 599.00	<u>Restitution:</u> \$ N/A	<u>Restitution Payable to:</u> (See special finding or order of restitution which is incorporated herein by this reference.)
Was the victim impact statement returned to the attorney representing the State? N/A			
(FOR STATE JAIL FELONY OFFENSES ONLY) Is Defendant presumptively entitled to diligent participation credit in accordance with Article 42A.559, Tex. Code Crim. Proc.? N/A			
<u>Total Jail Time Credit:</u> 5 DAYS		<u>If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.</u> N/A DAYS NOTES: N/A	

This cause was called for trial by jury and the parties appeared. The State appeared by her District Attorney as named above.

Counsel / Waiver of Counsel (select one)☒ Defendant appeared with counsel.☐ Defendant appeared without counsel and knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

☐ Defendant was tried in absentia.

Both parties announced ready for trial. It appeared to the Court that Defendant was mentally competent to stand trial. A jury was selected, impaneled, and sworn, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

In accordance with the jury's verdict, the Court ADJUDGES Defendant GUILTY of the above offense. The Court FINDS that the Presentence Investigation, if so ordered, was done according to the applicable provisions of Subchapter F, Chapter 42A, Tex. Code Crim. Proc.

The Court ORDERS Defendant punished in accordance with the jury's verdict or Court's findings as to the proper punishment as indicated above. After having conducted an inquiry into Defendant's ability to pay, the Court ORDERS Defendant to pay the fine, court costs, and restitution, if any, as indicated above.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court ORDERS the authorized agent of the State of Texas or the County Sheriff to take and deliver Defendant to the Director of the Correctional Institutions Division, TDCJ, for placement in confinement in accordance with this judgment. The Court ORDERS Defendant remanded to the custody of the County Sheriff until the Sheriff can obey the directions of this paragraph. Upon release from confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fine, court costs, and restitution due.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court ORDERS Defendant committed to the custody of the County Sheriff immediately or on the date the sentence commences. Defendant shall be confined in the county jail for the period indicated above. Upon release from confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fine, court costs, and restitution due.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay the fine, court costs, and restitution ordered by the Court in this cause.

☐ **Confinement as a Condition of Community Supervision.** The Court ORDERS Defendant confined _____ days in _____ as a condition of community supervision. The period of confinement as a condition of community supervision starts when Defendant arrives at the designated facility, absent a special order to the contrary.

Execution / Suspension of Sentence

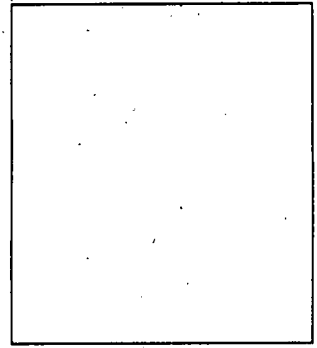
☒ The Court ORDERS Defendant's sentence EXECUTED. The Court FINDS that Defendant is entitled to the jail time credit indicated above. The attorney for the state, attorney for the defendant, the County Sheriff, and any other person having or who had custody of Defendant shall assist the clerk, or person responsible for completing this judgment, in calculating Defendant's credit for time served. All supporting documentation, if any, concerning Defendant's credit for time served is incorporated herein by this reference.

Furthermore, the following special findings or orders apply:

Date Judgment Entered: March 4, 2019

X
Brandon Birmingham JUDGE PRESIDING

Clerk: Dalvarez



Right Thumbprint*

*Certificate of Thumbprint attached.

Cause No. F1550350-V

TRN 9191438284

THE STATE OF TEXAS

§

IN THE 292nd JUDICIAL

JUDGMENT
CERTIFICATE OF THUMBPRINT

THE STATE OF TEXAS

CAUSE NO. F 1550350 -v

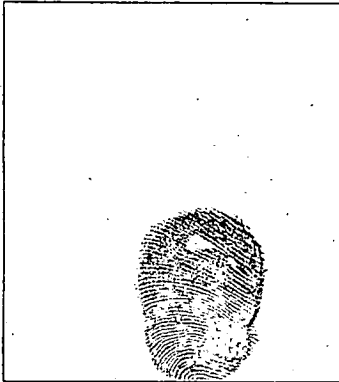
VS.

JUDICIAL 292nd

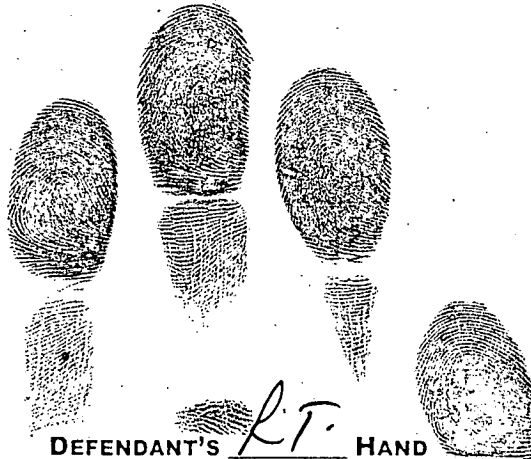
DISTRICT COURT #74

Stoyan Anastassov

DALLAS COUNTY, TEXAS



RIGHT THUMB



DEFENDANT'S R.T. HAND

THIS IS TO CERTIFY THAT THE FINGERPRINTS ABOVE ARE THE ABOVE-NAMED DEFENDANT'S FINGERPRINTS TAKEN AT THE TIME OF DISPOSITION OF THE ABOVE STYLED AND NUMBERED CAUSE.

DONE IN COURT THIS 28 DAY OF February, 2019.

D-1/Martin #839
BAILIFF/DEPUTY SHERIFF

*INDICATE HERE IF PRINT OTHER THAN DEFENDANT'S RIGHT THUMBPRINT IS PLACED IN BOX:

____ LEFT THUMBPRINT

____ LEFT/RIGHT INDEX FINGER

____ OTHER, _____

SIGNED AND ENTERED ON THIS 28 DAY OF February, 2019.

[Signature]
PRESIDING JUDGE

DEFENDANT'S MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES STOYAN KALINOV ANASTASSOV, the Defendant in this indictment and its companion indictment and files this his motion seeking a new trial of all the charges against him, and for cause would show as follows:

I.

Background

The Defendant is the subject of two indictments filed in the 292nd Criminal District Court of Dallas County, Texas. Both indictments allege Indecency with a Child by Contact, to wit: Cause No. F15-50349-V;

“That **STOYAN KALINOV ANASTASSOV**, hereinafter called Defendant, on or about 24th day of December, 2011 in the County of Dallas, State of Texas, did unlawfully, with the intent to arouse and gratify the sexual desire of the defendant, engage in sexual contact with **SIMMONE SPIELMANN**, hereinafter called complainant, a child younger than 17 years and not then the spouse of the defendant, by contact between the hand of the defendant and the **GENITALS** of the complainant,”

Cause No. F15-50350-V:

“That **STOYAN KALINOV ANASTASSOV**, hereinafter called Defendant, on or about 24th day of December, 2011 in the County of Dallas, State of Texas, did unlawfully, with the intent to arouse and gratify the sexual desire of the defendant, engage in sexual contact with **SIMMONE SPIELMANN**, hereinafter called complainant, a child younger than 17 years and not then the spouse of the defendant, by contact between the hand of the defendant and the **BREAST** of the complainant,

On February 21, 2019, a jury was impaneled and sworn, both cases were tried together.

At the conclusion of the evidence, the Court charged the jury on each case individually. The jury found the Defendant guilty of both cases and assessed punishment at three (3) years TDC in F15-50350-V and nine (9) years TDC in F15-50349-V. The judgment and sentence on both cases were entered by the Court on February 28, 2019.

II.

Ground One

The trial court erred when it overruled Defendant's objection to the admissibility of the testimony of Natalie Holmes as extraneous bad conduct under Tex.R.Crim.Code 404(b). The witness was not underage at the time of her sexual conduct with the Defendant. Their conduct did not constitute a crime and it preceded the conduct alleged in these two indictments.

Witness Holmes's testimony was not relevant to an issue in the case. Rules 401 and 402, Tex.R.Ev. The probative value the testimony was substantially outweighed by the unfair prejudice of the testimony. Rule 403, Tex.R.Ev. The testimony constituted an admission of evidence of an extraneous crime, wrong, or other act that was being offered regarding, or had the effect of being evidence, the Defendant's character in violation of Rule 404(b), Tex.R.Ev. The admission of this evidence and the Court's failure to sustain the Defendant's objection affected the substantial rights of the Defendant and was harmful as evidenced by the jury's verdict.

III.

Ground Two

The trial court erred in entering a judgment of conviction of the Defendant for both indictments. Conviction for both indictments for conduct that arose out of a single incident violates the double jeopardy prohibitions against more than one conviction for the same conduct. Fifth Amendment, United States Constitution; Article I, Section 14, Texas Constitution; *Evans v. State*,

299 S.W.3d 138 (Tex.Crim.App. 2009); *Aekins v. State*, 497 S.W.3d 270 (Tex.Crim.App. 2014); *DeMoss v. State*, 12 S.W.3d 553, 561 (Tex.App.-San Antonio 1999); *Blockburger v. United States*, 284 U.S. 299 (1932).

IV.

Ground Three

Considering the testimony, the physical evidence, and the law, the verdict is contrary to the law and the evidence.

WHEREFORE, PREMISES CONSIDERED, the Defendant request that the Court grant him a new trial on each of the two indictments.

Respectfully submitted,

BURLESON, PATE & GIBSON, L.L.P.

/s/ Tom Pappas

TOM PAPPAS
TEXAS BAR CARD NO. 15455300

900 Jackson Street, Suite 330
Dallas, Texas 75202
Telephone: (214) 871-4900
Facsimile: (214) 871-7543
Email: tpappas@bp-g.com

COUNSEL FOR DEFENDANT
STOYAN KALINOV ANASTASSOV

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion was delivered by electronic filing to Brandie Wade, the Assistant District Attorney in charge, on this the 27th day of March, 2019.

/s/ Tom Pappas

TOM PAPPAS

NO. F15-50350-V

STATE OF TEXAS	§	IN THE 292ND CRIMINAL
V.	§	DISTRICT COURT OF
STOYAN KALINOV ANASTASSOV	§	DALLAS COUNTY, TEXAS

ORDER

ON THIS DAY came on to be heard, the Defendant's Motion for New Trial, upon consideration of same the Court is of the opinion that said motion should be and the same is hereby:

GRANTED DENIED, to which action the Defendant timely noted an objection.

SIGNED this ____ day of _____ 2019.

JUDGE PRESIDING

THE STATE OF TEXAS

CAUSE NO. F 15-50350-V

VS.

JUDICIAL 292nd DISTRICT COURT

STOYAN ALIASSASSOV

DALLAS COUNTY, TEXAS

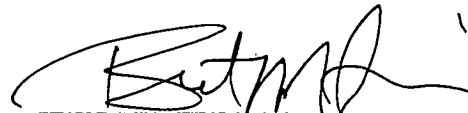
DEFENDANT'S MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the Defendant in the above cause and by his Attorney, and moves the Court to grant him a New Trial herein for the good and sufficient reason that the verdict is contrary to the law and evidence.

Wherefore, Defendant prays the Court grant a new trial herein.

Respectfully submitted,


Attorney for Defendant

ORDER

The above Motion is hereby:

☐ (GRANTED) ☐ (OVERRULED)

JUDGE

FILED
2019 MAR 27 PM 3:56
FELICIA PITRE
CLERK
JUDICIAL DISTRICT NO. 292
DALLAS COUNTY, TEXAS
DEPUTY

Loc. North Tower 3E East, 3rd Floor Control Center 3E01

Bookin Number: 19010638

Audit Number: 201917224

APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANT

The State of Texas

292nd Judicial District Court (FV)

Vs.

District Court

STOYAN ANASTASSOV

Dallas County, Texas

Cause No.:	Offense	
f1550349v	IND CHILD CONT	LD
f1550350v	IND CHILD CONT	F2
		F2

It appearing that the defendant has executed a sworn statement certifying that he/she is without means to employ counsel and requesting appointment of counsel; the Court finds that the defendant is indigent and hereby appoints: The Attorney: MICHAEL MOWLA

Phone: 972-795-2401 Alt. Phone: 972/795-2401

Email: MICHAEL@MOWLALAW.COM

Address: P O BOX 868, CEDAR HILL, TX 75106

A practicing attorney of the State to represent the defendant in said case(s).

Signed this 27th day of March, 2019

JUDGE

JUDGE BRANDON BIRMINGHAM

A handwritten signature in black ink, appearing to be "Birmingham", is written over the printed name of the judge.